







SP-04003



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**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO BORDER CAB TAXI COMPANY AUTHORIZING TWO TAXICAB STANDS ON PORTIONS OF PUBLIC RIGHTS-OF-WAY ALONG SIXTH AVENUE WITH TWO TAXICAB STANDS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege License upon the following terms with BORDER CAB TAXI COMPANY:

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A";
2. The Special Privilege License permits BORDER CAB TAXI COMPANY'S use of portions of public right-of-way with a total of two (2) taxicab stands, located along the 100 and 200 block of Sixth Avenue, El Paso, El Paso County, Texas, as described in Section 1 of Exhibit "A", and more particularly shown in the attached and incorporated Exhibit "B";
3. As consideration for this Special Privilege, BORDER CAB TAXI COMPANY shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and
4. This Special Privilege shall for a term of one (1) year, with month-to-month renewal options as provided in Exhibit "A".

**PASSED AND APPROVED** this 6<sup>th</sup> day of **April, 2004.**

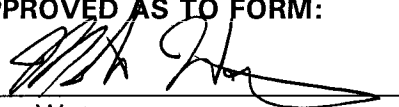
**THE CITY OF EL PASO**

\_\_\_\_\_  
Joe Wardy, Mayor

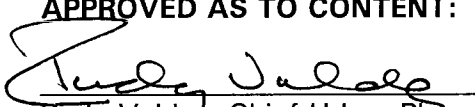
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Matt Watson  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Rudy Valdez, Chief Urban Planner  
Planning, Research & Development

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

**EXHIBIT "A"**  
**SPECIAL PRIVILEGE**

THIS SPECIAL PRIVILEGE, made and entered into this day of **6<sup>th</sup>** day of **April, 2004**, by and between the **CITY OF EL PASO**, hereinafter called "City", and **BORDER CAB TAXI COMPANY**, hereinafter called "Grantee".

**WITNESSETH:**

**WHEREAS**, grantee operates a duly licensed taxicab company in the City of El Paso, Texas; and

**WHEREAS**, Grantee proposes to operate two (2) taxicab stands on portions City public right-of-way one (1) along Sixth Avenue between El Paso Street and Oregon Street; and one (1) along Sixth Avenue between Oregon Street and Mesa Street, both in the City of El Paso, El Paso County, Texas; and

**WHEREAS**, the City Council of the City of El Paso finds that the grant of this Special Privilege under the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1.     **DESCRIPTION.**       The City hereby grants a Special Privilege to Grantee to use portions of public right-of-way, more particularly described as: one (1) space located on the north side of the 100 block of Sixth Avenue between El Paso Street and Oregon Street in the designated rotating first-in first-out taxi stand area; and one (1) space located along the north side of the 200 block of Sixth Avenue between Oregon Street and Mesa Street and more particularly the first space located adjacent to the corner of Sixth Street and Oregon Avenue facing parallel in a northerly direction, both spaces shown in Exhibit "B" which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises".

2.     **TERM.** The term of this Special Privilege shall be for one (1) year from the date of execution of this agreement. At the end of the initial one (1) year term, the City shall have the option to extend the Special Privilege on a month-to-month basis. In any instance, the cancellation provisions within Paragraph 9 shall apply. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee. If the

Grantee wishes the City to renew this Special Privilege on a month-to-month basis, Grantee shall submit a request in writing to the City no later than three (3) weeks prior to the expiration date of this Special Privilege. Should Grantee fail to submit such request for the month-to-month renewal of this Special Privilege to the City as herein required, the Special Privilege shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege. Authorization granted by the City to extend the Special Privilege on a month-to-month basis shall be effected in a certified letter to the Grantee.

**3. CONSIDERATION.** As consideration for this Special Privilege License, Grantee shall pay to the City the sum of One Thousand Two Hundred Seventy Nine and No/100 Dollars (\$1,279.00) for the initial one (1) year term payable in advance upon the execution of this agreement. Upon the City's option to renew on a month-to-month basis, Grantee shall thereafter pay the City the sum of One Hundred Four and No/100 Dollars (\$98.00) per month, payable on the first day of each month.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120.D. of the El Paso Municipal Code. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which may result from a recalculation or assessment of fees pursuant to enactment of future amendments.

**4. USE OF PROPERTY.** This Special Privilege License is granted solely for the encroachment onto public right-of-way with the operation of two (2) taxicab stands.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

**5. IMPROPER USE.** This Special Privilege License shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council. Grantee shall not permit on the Premises any activity, which violates



any state statute or City ordinance. Grantee shall not obstruct adjacent streets and sidewalks. Grantee shall use its best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Special Privilege.

**6. REPAIRS.** Grantee shall keep the Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance and repair costs.

**7. INDEMNITY.** As a condition of the Special Privilege License, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

**8. LIABILITY INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Department of Planning, Research & Development.

Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

**9. CANCELLATION.** Should the City at any time or for any reason decide that the right-of-way is needed for public use other than those conditions addressed in Paragraph 4, if Grantee loses his annual permit to operate a taxicab service in the City, or if Grantee fails to maintain the Premises in a condition and appearance reasonably acceptable to the City, the City may upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty days (30) prior written notice to the City, and all rights of Grantee shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty days (30) prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of one (1) year, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fail to correct such defaults within thirty days (30) after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, the grant hereof, as well as any property the Grantee has placed within the Premises, shall at the option of the City, be removed by the Grantee without cost to the City and the Premises shall be restored to the condition which existed as of the date Grantee commenced to use the Premises as is reasonable under the circumstances.

**10. LIENS AND ENCUMBRANCES.** Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. **ASSIGNMENT.** Grantee shall not assign this Special Privilege without the prior written consent of the City Council.

12. **MISCELLANEOUS.**

a. **SIGNS:** The City, at its sole cost and expense, shall erect appropriate signage to designate the Premises as a taxicab stand. This Special Privilege does not grant any permission to Grantee to erect signage, but, rather only authorizes an encroachment upon public right-of-way as described herein.

b. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

c. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's use or occupancy of the property. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

d. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns.

e. **NOTICES:** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
Attn: Mayor  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to:

City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

and:

Border Cab Tax Company  
3600 Frutas  
El Paso, TX 79905

or to such other address as the parties may designate to each other in writing from time to time.

f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

g. SEVERABILITY: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas.

i. GARBAGE AND TRASH: The Grantee shall not permit any trash, garbage or other refuse in any amount whatsoever to accumulate on the Premises, in adjacent gutters or on the adjacent sidewalks. The Grantee shall remove any such trash, garbage or refuse immediately should it be deposited on the property or the adjacent sidewalks by any person or other means. The Grantee shall further establish, maintain and empty as often as necessary, but at least once daily, a sidewalk litter receptacle of a design compatible with other such receptacles in downtown El Paso and in a location near the Premises to be approved by the Superintendent of Sanitation.

j. UTILITIES: This Special Privilege does not grant any permission to supply the Premises with any utility service, including telephone service. Permission to supply the Premises with any utility service shall be given through a separate instrument. Grantee shall assume and promptly pay for all costs or charges for utility services furnished to be used on the Premises during the term of this Special Privilege, including the cost of extending utility lines within the boundaries of the property, connecting such lines and setting meters if necessary, at Grantee's request.

**13. RESTRICTIONS AND RESERVATIONS.** This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall



have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

**14. EFFECTIVE DATE.** This Special Privilege shall not take effect unless Grantee files its written acceptance with the Planning, Research & Development Department prior to its passage and approval by the City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrants to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

**Signatures continue on following page:**

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
Joe Wardy, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Matt Watson  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Rudy Valdez, Chief Urban Planner  
Planning, Research & Development

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 17th  
day of March, 2004.

GRANTEE: BORDER CAB TAXI  
COMPANY

By: \_\_\_\_\_

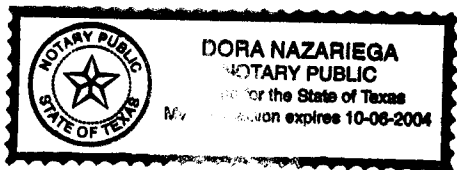
Joe Olivar / owner  
(printed name/title)

ACKNOWLEDGMENT

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

This instrument is acknowledged before me on this 17th day of March  
2004, by Joe Olivar as owner on behalf of  
**BORDER TAXI CABCOMPANY**, as Grantee.

My Commission Expires:



\_\_\_\_\_  
Notary Public, State of Texas

Notary's Printed or Typed Name:

Dora Nazariega